

UNITED STATES BANKRUPTCY COURT
Southern District of Indiana
Indianapolis Division

In re:)
)
Derek Kevin Cushenberry,) Case No. 17-00460-JJG-13
)
Debtor.)

DEBTOR'S AMENDED MOTION TO MODIFY CHAPTER 13 PLAN
PURSUANT TO 11 U.S.C. SECTION 1329(d)
AND CORRECTED NOTICE OF OBJECTION DEADLINE

The Debtor, by counsel, hereby moves the Court, pursuant to 11 U.S.C. Section 1329(d), to modify the plan that was confirmed on January 26, 2018 as follows:

1. Debtor's plan filed August 24, 2017 (Doc 43) was confirmed by Order entered January 26, 2018 (Doc 86). The plan provided for the Debtor to pay the Trustee \$17,500 through August 2, 2017, then \$5,000 per month for 53 months (\$265,000) for a total plan base of \$282,500.

2. As of December 20, 2020, Debtor has paid \$171,000 into the plan. Debtor has 14 months remaining on his 60-month plan.

3. Debtor proposes to extend the term of the plan to 84 months and to pay \$3,500 per month for 38 months commencing January 1, 2021 for a total plan base of \$304,000.

4. Collateral values and interest rates on secured claims shall remain as confirmed, but the equal monthly amount to secured claimants may be reduced due to the extended term.

5. Debtor's income leases at 40th Street and Boulevard Place have been terminated and are rejected. The lease with Northpark Credit Union has been terminated and is rejected.

6. Debtor will file tax returns when due and provide copies to the Trustee through 2023.

7. Except as modified herein, all other terms of the plan (Doc 43) and Order Confirming Plan (Doc 86) shall remain in effect as confirmed.

8. On April 12, 2020, the Debtor's building at 3961 Boulevard Place was damaged by fire resulting in the loss of debtor's rental income from the building and the cessation of debtor's coin laundromat business. Debtor has retained Special Counsel to pursue his insurance claim arising from the fire. Per the Court's Order approving Special Counsel entered December 16, 2020 (Doc 107), any funds recovered by suit or settlement are to be paid over to the Trustee for further distribution.

9. The Court may take judicial notice of the COVID-19 pandemic which hit about the same time as the fire and continues to this day. The COVID-19 pandemic and the various resulting public health orders (stay-at-home orders, business restrictions on in-person contact, etc.) have interfered with the normal processes of recovering from the fire. Everything from demolition of the burned out building to negotiations with the insurance company to reconstruction have or will be delayed by the ongoing pandemic.

10. Debtor's Affidavit in support hereof is included herewith as Exhibit A.

WHEREFORE, the debtor, by counsel, moves the Court to modify the plan as proposed and grant such other relief as appropriate.

***** NOTICE TO CLAIMANTS AND OTHER PARTIES IN INTEREST *****

NOTICE: Your rights may be affected. You should read through these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one. If you do not want the court to enter an order modifying the plan, or if you want the court to consider your views on the motion, then on or before **21 days** from the date of service, you or your attorney must file with the court a written objection explaining your position.

Those not permitted to file electronically must deliver any objection by U.S. Mail,

courier, overnight/express mail, or in person at:

Clerk, U.S. Bankruptcy Court
116 U.S. Courthouse
46 East Ohio Street
Indianapolis, IN 46204

If you mail your objection to the court, you must mail it early enough so the court will **receive** it on or before the deadline stated above.

You must also send a copy of your objection to:

Jay Andrew Harp, Attorney for Debtor
10475 Crosspoint Blvd., Suite 250
Indianapolis, IN 46256

Ann M. Delaney, Trustee
P.O. Box 441285
Indianapolis, IN 46244

Nancy J. Gargula, U.S. Trustee
101 West Ohio Street, Suite 1000
Indianapolis, IN 46204

John D. Waller, Attorney for Creditor, Butler Capital Corp.
Wooden McLaughlin
One Indiana Square, Suite 1800
Indianapolis, IN 46204

Steven Henry Patterson, Attorney for Creditor, Bayview Loan Servicing
Reisenfeld & Associates, LPA-LLC
3962 Red Bank Road
Cincinnati, OH 45227

If you or your attorney do not take these steps, the court may decide that you do not oppose an order modifying the plan, and may enter an order granting the relief.

Respectfully submitted,
/s/ Jay A. Harp
Jay Andrew Harp
10475 Crosspoint Blvd., Suite 250
Indianapolis, IN 46256
Tel. (317) 549-1112
Email: JayAHarp@aol.com
Attorney for Debtor

Certificate of Service

I hereby certify that on December 22, 2020, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system:

Ann M. Delaney, Trustee
ECFdelaney@trustee13.com, ecfdelaney@gmail.com

U.S. Trustee
ustpreion10.in.ecf@usdoj.gov

John D. Waller, Attorney for Creditor, Butler Capital Corp. (Claim No. 12)
jwaller@woodmclaw.com, sspencer@woodmclaw.com

Steven Henry Patterson, Attorney for Bayview (Claim No. 13)
inbk@rslegal.com, rsbkecfbackup@gmail.com,
reisenfeld@ecf.inforuptcy.com

I further certify that on December 22, 2020, a copy of the foregoing document was mailed by first-class U.S. Mail, postage prepaid and properly addressed, to the following:

World Acceptance Corporation Attn: Bankruptcy (Claim No. 2)
P.O. Box 6429
Greenville, SC 29606

Internal Revenue Service (Claim No. 3)
P.O. Box 7346
Philadelphia, PA 19101-7346

Quantum3 Group LLC as agent for Sadino Funding LLC (Claim No.4)
P.O. Box 788
Kirkland, WA 98083-0788

Resurgent Capital Services (Claim No. 5)
P.O. Box 10587
Greenville, SC 29603-0587

Jeremy L. Fetty (Claim No. 6)
251 N. Illinois Street, Suite 1800
Indianapolis, IN 46204

The Huntington National Bank (Claim No. 7)
P.O. Box 89424
Cleveland, OH 44101-8539

Indiana Department of Revenue
101 North Senate Avenue N-240 MS 108
Indianapolis, IN 46204

(Claim No. 8)

Resurgent Capital Services LP
P.O. Box 10675
Greenville, SC 29603-0675

(Claim No. 9)

Bleecker, Brodey & Andrews
9247 N. Meridian Street, Suite 101
Indianapolis, IN 46260

(Claim No. 10)

Indiana University Health System
P.O. Box 1123
Minneapolis, MN 55440-1123

(Claim No. 11)

/s/ Jay A. Harp
Jay Andrew Harp

UNITED STATES BANKRUPTCY COURT
Southern District Of Indiana
Indianapolis Division

In re:)
)
Derek Kevin Cushenberry,) Case No. 17-00460-JJG-13
)
Debtor.)

DEBTOR'S AFFIDAVIT IN SUPPORT OF SECTION 1329(d) MOTION TO MODIFY

I, Derek Kevin Cushenberry, upon first being duly sworn, depose and state as follows:

1. That I am the Debtor in the above-captioned case.

2. My plan was confirmed on January 26, 2018. The plan provided I pay the Trustee \$17,500 through August 2, 2017, then \$5,000 per month for 53 months (\$265,000) for a total plan base of \$282,500.

3. As of December 20, 2020, I have paid \$171,000 into the plan. I have 14 months remaining on my 60-month plan.

4. I propose to extend the term of the plan to 84 months and to pay \$3,500 per month for 38 months commencing January 1, 2021 for a total plan base of \$304,000. Collateral values and interest rates on secured claims shall remain as confirmed, but the equal monthly amount to secured claimants may be reduced due to the extended term. My income leases at 40th Street and Boulevard Place have been terminated and are rejected. My lease with Northpark Credit Union has been terminated and is rejected. I will file tax returns when due and provide copies to the Trustee through 2023. Except as modified herein, all other terms of the plan and confirmation order shall remain in effect.

5. On April 12, 2020, my building at 3961 Boulevard Place was damaged by fire resulting in the loss of my rental income from the building and the cessation of my coin

Exhibit A

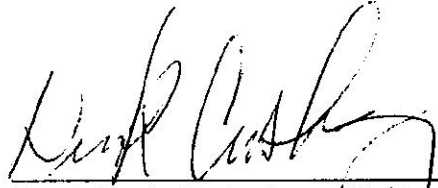
laundromat business. I have retained Special Counsel to pursue my insurance claim arising from the fire and any funds recovered by suit or settlement are to be paid over to the Trustee for further distribution.

6. The COVID-19 pandemic hit about the same time as the fire and continues to this day. The COVID-19 pandemic and the various resulting public health orders (stay-at-home orders, business restrictions on in-person contact, etc.) have interfered with the normal processes of recovering from the fire. Everything from demolition of the burned out building to negotiations with the insurance company to reconstruction have or will be delayed by the ongoing pandemic.

7. I am experiencing and have experienced a material financial hardship due, directly or indirectly, to the COVID-19 pandemic.

FURTHER AFFIANT SAYETH NOT.

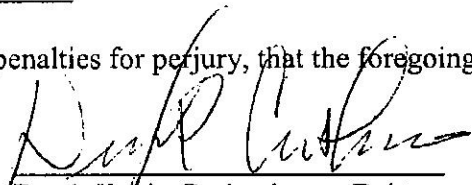
Date: 12/20/2020


Derek Kevin Cushenberry, Debtor

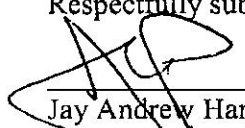
VERIFICATION

I, Derek Kevin Cushenberry, affirm, under penalties for perjury, that the foregoing statements are true.

Date: 12/20/2020


Derek Kevin Cushenberry, Debtor

Respectfully submitted,


Jay Andrew Harp, Attorney at law
10475 Crosspoint Blvd., Suite 250
Indianapolis, IN 46256
Tel. (317) 549-1112
Email: JayAHarp@aol.com
Attorney for Debtor